

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SILVON S. SIMMONS,

Plaintiff,

ANSWERING AFFIDAVIT

vs.

17-CV-6176-FPG-MWP

JOSEPH M. FERRIGNO, II, SAMUEL
GIANCURSIO, MARK WIATER,
CHRISTOPHER MUSCATO, ROBERT
WETZEL, MICHAEL L. CIMINELLI,
JOHN DOES 1-20, CITY OF ROCHESTER,
SHOTSPOTTER, INC., SST, INC.,
JOHN DOES 21-30 and PAUL C. GREENE,

Defendants.

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

Charles F. Burkwit, being duly sworn, deposes and says:

1. I am an attorney at law, duly licensed to practice my profession in the State of New York and am the attorney of record for Plaintiff Silvon S. Simmons (hereinafter "Plaintiff"), and as such, I am fully familiar with the facts and circumstances of this action.

2. I give this Affidavit in opposition to Defendants ShotSpotter, Inc., SST, Inc. and Paul C. Greene's motion compelling Plaintiff to respond to the ShotSpotter Defendants' Second Set of Interrogatories.

3. The undersigned acknowledges that the Shotspotter Defendants are owed a response to their Second Set of Interrogatories and the undersigned is currently working on finishing a response.

4. The undersigned wanted to wait to respond to the Shotspotter Defendants' Second Set of Interrogatories since depositions are still being taken and it is not possible to give a complete accurate response until depositions have been concluded. Although discovery against the Shotspotter Defendants may be substantially complete, discovery against the City Defendants is nowhere near complete due to their refusal to provide complete document discovery and due to the ongoing discovery motion practice.

5. The Shotspotter Defendants' Second Set of Interrogatories (Exhibit A – Sanders Declaration) asks Plaintiff to identify each individual and the actions they took to falsely create, or participate in the creation of, “additional gun shots on Shotspotter audio and/or reports” and/or engage in conduct to “fabricate and falsify evidence and secure false charges against Plaintiff” as alleged in ¶¶307 and 316 of the Amended Complaint.

6. As this Court is aware, the Plaintiff has alleged a cause for action for conspiracy to violate civil rights, malicious prosecution and denial of the right to a fair trial pursuant to 42 USC §1983 and malicious prosecution against all Defendants (Counts III, IV & V – Amended Complaint, Doc. 10-1) and therefore the Plaintiff is being asked to identify each individual and the actions they took to falsely create, or participate in the creation of additional gun shots on Shotspotter audio and/or reports and to identify their conduct to fabricate and falsify evidence and secure false charges against Plaintiff.

7. The Plaintiff's response to the Shotspotter Defendants' Second Set of Interrogatories will not only require information obtained from the Shotspotter Defendants

but also representatives from Defendant City of Rochester and non-party witnesses and therefore, this is why the undersigned wanted additional time before responding to Defendants' Second Set of Interrogatories since discovery is nowhere near complete.

8. Upon considering that a third motion to compel discovery against the City Defendants is pending, there is no dispute that the City Defendants have not provided complete discovery to Plaintiff and there are many more depositions yet to be conducted in this case.

9. In light of the foregoing, the undersigned will finish preparing a preliminary response to the Shotspotter Defendants' Second Set of Interrogatories reserving Plaintiff's right to amend or supplement it once discovery is completed. As the undersigned will serve Plaintiff's preliminary response on the Shotspotter Defendants' counsel prior to the May 18, 2021 motion hearing in this matter, this motion should be voluntarily withdrawn by the Shotspotter Defendants by that time.

WHEREFORE, your deponent respectfully requests that this Court deny the Shotspotter Defendants' motion to compel Plaintiff to respond to the Second Set of Interrogatories and grant such other and further relief as the Court deems just and proper.

s/Charles F. Burkwit, Esq.

Charles F. Burkwit, Esq.

Sworn to before me this
15th day of April, 2021.

s/Robert L. Burkwit

Notary Public

